

SIMPLE IRAs - INTERNAL REVENUE CODE §§ 408(p)
(Changes from 6-1997 package are underlined.)

List of Required Modifications and Information Package

This information package contains samples of provisions that have been found to satisfy certain provision of the Internal Revenue Code as amended through the Taxpayer Relief Act of 1997, Pub. L. No. 105-34. Such language may or may not be acceptable in specific SIMPLE IRAs, depending on the context.

Part A, provisions 1 - 12B, applies to SIMPLE IRA accounts under Code §§ 408(a) and 408(p). Part B, provisions 13 - 22B, applies to SIMPLE IRA annuities under Code §§ 408(b) and 408(p).

PART A: ACCOUNTS - Trust or custodial accounts under Code §§ 408(a) and 408(p). Provisions 1 - 12B apply to SIMPLE IRA accounts.

- (1) **Statement of Requirement:** The IRA is organized and operated for the exclusive benefit of the individual, Code § 408(a).
Sample Language:

The account is established for the exclusive benefit of the individual or his or her beneficiaries.

- (2) **Statement of Requirement:** Maximum permissible annual contribution, Code § 408(p)(1)(B). **Sample Language:**

This SIMPLE IRA will accept only:

- (a) a cash contribution made by an employer on behalf of the individual under a SIMPLE IRA Plan that meets the requirements of § 408(p) of the Internal Revenue Code, and
- (b) a rollover contribution or a transfer of assets from another SIMPLE IRA of the individual.

No other contributions will be accepted.

(3) Statement of Requirement: An investment in collectibles will be treated as a distribution, Code § 408(m). Sample Language:

If the trust acquires collectibles within the meaning of Code § 408(m) after December 31, 1981, trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(Note to reviewer: This provision is not required if the arrangement precludes any investments that could be construed as collectibles. Code § 408(m)(3) provides an exception to this rule for certain coins and precious metals.)

(4) Statement of Requirement: Prohibition against investment in life insurance, Code § 408(a)(3). Sample Language:

No part of the trust funds will be invested in life insurance contracts.

(5) Statement of Requirement: Distributions before death must commence no later than 70½, Code § 408(a)(6). Sample Language:

The entire value of the account of the individual for whose benefit the account is maintained will be distributed or commence to be distributed, no later than the first day of April following the calendar year in which such individual attains age 70½ (required beginning date), over (a) the life of such individual, or the lives of such individual and his or her designated beneficiary, or (b) a period certain not extending beyond the life expectancy of such individual, or the joint and last survivor expectancy of such individual and his or her designated beneficiary.

The amount to be distributed each year, beginning with the first calendar year for which distributions are required and then for each succeeding calendar year, shall not be less than the quotient obtained by dividing the individual's benefit by the lesser of (1) the applicable life expectancy or (2) if the individual's spouse is not the designated beneficiary, the applicable divisor determined from the table set forth in Q&A-4 or Q&A-5 of § 1.401(a)(9)-2 of the Proposed Income Tax Regulations. Distributions after the death of the individual shall be distributed using the applicable life expectancy as the relevant divisor without regard to proposed regulations § 1.401(a)(9)-2.

Life expectancy is computed by use of the expected return multiples in Tables V and VI of § 1.72-9 of the Income Tax Regulations. Unless otherwise elected by the individual by the time distributions are required to begin, life expectancies shall

be recalculated annually. Such election shall be irrevocable by the individual and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated. Instead, life expectancy will be calculated using the attained age of such beneficiary during the calendar year in which the individual attains age 70½, and payments for subsequent years shall be calculated based on such life expectancy reduced by one for each calendar year which has elapsed since the calendar year life expectancy was first calculated.

(6) Statement of Requirement: Distribution upon death, Code § 408(a)(6). Sample Language:

(a) Distributions beginning before death. If the individual dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the individual's death.

(b) Distributions beginning after death. If the individual dies before distribution of his or her interest begins, distribution of the individual's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the individual's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below.

(1) If the individual's interest is payable to a designated beneficiary, then the entire interest of the individual may be distributed over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the individual died.

(2) If the designated beneficiary is the individual's surviving spouse, the date distributions are required to begin in accordance with (1) above shall not be earlier than the later of (A) December 31 of the calendar year immediately following the calendar year in which the individual died or (B) December 31 of the calendar year in which the individual would have attained age 70½.

(c) If the designated beneficiary is the individual's surviving spouse, the spouse may treat the account as his or her own SIMPLE IRA. This election will be deemed to have been made if such surviving spouse fails to elect any of the above provisions, makes a rollover from the account, makes a rollover to the account from another SIMPLE IRA of the surviving spouse, or if an employer of the surviving spouse makes a contribution to the account under a SIMPLE IRA Plan maintained by such employer.

(d) Life expectancy is computed by use of the expected return multiples in Tables V and VI of § 1.72-9 of the Income Tax

Regulations. For purposes of distributions beginning after the individual's death, unless otherwise elected by the surviving spouse by the time distributions are required to begin, life expectancies shall be recalculated annually. Such election shall be irrevocable by the surviving spouse and shall apply to all subsequent years. In the case of any other designated beneficiary, life expectancies shall be calculated using the attained age of such beneficiary during the calendar year in which distributions are required to begin pursuant to this section, and payments for any subsequent calendar year shall be calculated based on such life expectancy reduced by one for each calendar year which has elapsed since the calendar year life expectancy was first calculated.

(e) Distributions under this section are considered to have begun if the distributions are made on account of the individual reaching his or her required beginning date. If the individual receives distributions prior to the required beginning date and the individual dies, distributions will not be considered to have begun.

(Note to reviewer: The definition of required beginning date is contained in LRM 5.)

(7) Statement of Requirement: Individual's interest must be nonforfeitable, Code § 408(a)(4). Sample Language:

The interest of an individual in the balance in his or her account is nonforfeitable at all times.

(8) Statement of Requirement: Prohibition against commingling of assets, Code § 408(a)(5). Sample Language:

The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(9) Statement of Requirement: Separate accounting for the interest of each individual under an IRA established by an employer or employee association, Regs. § 1.408-2(c)(3). Sample Language:

Separate records will be maintained for the interest of each individual.

(Note to reviewer: The above provision is required only in IRAs that are sponsored by the employer or employee association.)

(10) Statement of Requirement: Annual reports by trustees, Code § 408(1)(2)(B) and Regs. § 1.408-5. Sample Language:

The trustee of an individual retirement account shall furnish annual calendar year reports concerning the status of the account.

If contributions made on behalf of the individual pursuant to a SIMPLE IRA Plan maintained by the individual's employer are received directly by the trustee of this SIMPLE IRA from the employer, the trustee will provide the employer with the summary description required by Code § 408(1)(2)(B).

(11) Statement of Requirement: Substitution of non-bank trustee or custodian, Regs. § 1.408-2(e)(6)(v). Sample Language:

The non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of § 1.408-2(e) of the Income Tax Regulations.

(Note to reviewer: This provision is required only in IRA accounts that are sponsored by non-bank trustees or custodians.)

(12) Statement of Requirement: Includible compensation.

(Note to reviewer: A prototype SIMPLE IRA is not permitted to contain a definition of compensation.)

(12A) Statement of Requirement: No cost or penalty for transfer from a designated financial institution, Code § 408(p)(7). Sample Language:

If this SIMPLE IRA is maintained by a designated financial institution (within the meaning of Code § 408(p)(7)) under the terms of a SIMPLE IRA Plan of the individual's employer, the individual must be permitted to transfer the individual's balance without cost or penalty (within the meaning of § 408(p)(7)) to another IRA of the individual that is qualified under § 408(a), (b) or (p).

(Note to reviewer: This provision is required unless the SIMPLE IRA provides that it cannot be used by a trustee, custodian or issuer that is a designated financial institution within the meaning of Code § 408(p)(7).)

(12B) Statement of Requirement: Restriction on rollovers and transfers, and additional tax for distributions, within 2 years, Code § 408(d)(3)(G) and 72(t)(6). Sample Language:

Prior to the expiration of the 2-year period beginning on the date the individual first participated in any SIMPLE IRA Plan maintained by the individual's employer, any rollover or transfer by the individual of funds from this SIMPLE IRA must be made to another SIMPLE IRA of the individual. Any distribution of funds to the individual during this 2-year period may be subject to a 25-percent additional tax if the individual does not roll over the amount distributed into a SIMPLE IRA. After the expiration of this 2-year period, the individual may roll over or transfer funds to any IRA of the individual that is qualified under Code § 408(a), (b) or (p).

PART B. ANNUITIES - Annuities under Code § 408(b) and 408(p). Provisions 13 - 22B apply to SIMPLE IRA annuities.

(13) Statement of Requirement: The IRA is organized and operated for the exclusive benefit of the individual, Code § 408(b). Sample Language:

The contract is established for the exclusive benefit of the individual or his or her beneficiaries.

(14) Statement of Requirement: Maximum permissible annual contribution, Code § 408(p)(1)(B). Sample Language:

This SIMPLE IRA will accept only:

- (a) a cash contribution made by an employer on behalf of the individual under a SIMPLE IRA Plan that meets the requirements of § 408(p) of the Internal Revenue Code, and
- (b) a rollover contribution or a transfer of assets from another SIMPLE IRA of the individual.

No other contributions will be accepted.

(15) Statement of Requirement: Distributions before death must commence no later than 70½, Code § 408(b)(3). Sample Language:

The entire interest of the individual for whose benefit the contract is maintained will be distributed or commence to be distributed, no later than the first day of April following the calendar year in which such individual attains age 70½ (required beginning date), over (a) the life of such individual, or the lives of such individual and his or her designated beneficiary, or (b) a period certain not extending beyond the life expectancy of such individual, or the joint and last survivor expectancy of such individual and his or her designated beneficiary. Payments must be made in periodic payments at intervals of no longer than one year. In addition, payments must be either nonincreasing or they may increase only as provided in Q&A F-3 of § 1.401(a)(9)-1 of the Proposed Income Tax Regulations.

All distributions made hereunder shall be made in accordance with the requirements of Code § 401(a)(9), including the incidental death benefit requirements of Code § 401(a)(9)(G), and the regulations thereunder, including the minimum distribution incidental benefit requirement of § 1.401(a)(9)-2 of the Proposed Income Tax Regulations.

Life expectancy is computed by use of the expected return multiples in Tables V and VI of § 1.72-9 of the Income Tax Regulations. Unless otherwise elected by the individual by the time distributions are required to begin, life expectancies shall be recalculated annually. Such election shall be irrevocable by the individual and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated. Instead, life expectancy will be calculated using the attained age of such beneficiary during the calendar year in which the individual attains age 70½, and payments for subsequent years shall be calculated based on such life expectancy reduced by one for each calendar year which has elapsed since the calendar year life expectancy was first calculated.

(16) Statement of Requirement: Distribution upon death, Code § 408(b)(3). Sample Language:

(a) Distributions beginning before death. If the individual dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the individual's death.

(b) Distributions beginning after death. If the individual dies before distribution of his or her interest begins, distribution of the individual's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the individual's death except to the extent that an election

is made to receive distributions in accordance with (1) or (2) below.

(1) If the individual's interest is payable to a designated beneficiary, then the entire interest of the individual may be distributed over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the individual died.

(2) If the designated beneficiary is the individual's surviving spouse, the date distributions are required to begin in accordance with (1) above shall not be earlier than the later of (A) December 31 of the calendar year immediately following the calendar year in which the individual died or (B) December 31 of the calendar year in which the individual would have attained age 70½.

(c) If the designated beneficiary is the individual's surviving spouse, the spouse may treat the contract as his or her own SIMPLE IRA. This election will be deemed to have been made if such surviving spouse fails to elect any of the above provisions, makes a rollover from the contract, makes a rollover to the contract from another SIMPLE IRA of the surviving spouse, or if an employer of the surviving spouse makes a contribution to the contract under a SIMPLE IRA Plan maintained by such employer.

(d) Life expectancy is computed by use of the expected return multiples in Tables V and VI of § 1.72-9 of the Income Tax Regulations. For purposes of distributions beginning after the individual's death, unless otherwise elected by the surviving spouse by the time distributions are required to begin, life expectancies shall be recalculated annually. Such election shall be irrevocable by the surviving spouse and shall apply to all subsequent years. In the case of any other designated beneficiary, life expectancies shall be calculated using the attained age of such beneficiary during the calendar year in which distributions are required to begin pursuant to this section, and payments for any subsequent calendar year shall be calculated based on such life expectancy reduced by one for each calendar year which has elapsed since the calendar year life expectancy was first calculated.

(e) Distributions under this section are considered to have begun if distributions are made on account of the individual reaching his or her required beginning date or if prior to the required beginning date distributions irrevocably commence to an individual over a period permitted and in an annuity form acceptable under § 1.401(a)(9)-2 of the Proposed Regulations.

(Note to reviewer: The definition of required beginning date is contained in LRM 15.)

(17) Statement of Requirement: Individual's interest must be nonforfeitable, Code § 408(b)(4). Sample Language:

The interest of the individual is nonforfeitable.

(18) Statement of Requirement: Contract is nontransferable by the owner, Code § 408(b)(1). Sample Language:

This contract is nontransferable by the individual.

(19) Statement of Requirement: Application of refund premiums, Code § 408(b)(2). Sample Language:

Any refund of premiums (other than those attributable to excess contributions) will be applied, before the close of the calendar year following the year of the refund, toward the payment of future premiums or the purchase of additional benefits.

(Note to reviewer: Language that meets the requirements of this provision must be included in annuities that provide for participation in dividends.)

(20) Statement of Requirement: Contract may not require fixed premiums; however, the sample language below does not violate this requirement, Code § 408(b)(2) and proposed regulation § 1.408-3(f). Sample Language:

If the premium payments are interrupted, the contract will be reinstated at any date prior to maturity upon payment by an employer under a SIMPLE IRA Plan of a premium to the Company, and the minimum premium amount for reinstatement shall be ____ (not to exceed \$50), however, the Company may at its option either accept additional future payments or terminate the contract by payment in cash of the then present value of the paid up benefit if no premiums have been received for two full consecutive policy years and the paid up annuity benefit at maturity would be less than \$20 per month.

(21) Statement of Requirement: Annual reports by issuers, Code § 408(l)(2)(B) and Regs. § 1.408-5. Sample Language:

The issuer of an individual retirement annuity shall furnish annual calendar year reports concerning the status of the annuity.

If contributions made on behalf of the individual under a SIMPLE IRA Plan maintained by the individual's employer are received directly by the issuer of this SIMPLE IRA contract from the employer, the issuer will provide the employer with the summary description required by Code § 408(l)(2)(B).

(22) Statement of Requirement: Includible Compensation.

(Note to reviewer: A prototype SIMPLE IRA is not permitted to contain a definition of compensation.)

**(22A) Statement of Requirement: No cost or penalty for transfer from a designated financial institution, Code § 408(p)(7).
Sample Language:**

If this SIMPLE IRA is maintained by a designated financial institution (within the meaning of Code § 408(p)(7)) under the terms of a SIMPLE IRA Plan of the individual's employer, the individual must be permitted to transfer the individual's balance without cost or penalty (within the meaning of § 408(p)(7)) to another IRA of the individual that is qualified under § 408(a), (b) or (p).

(Note to reviewer: This provision is required unless the SIMPLE IRA provides that it cannot be used by a trustee, custodian or issuer that is a designated financial institution within the meaning of Code § 408(p)(7)).

(22B) Statement of Requirement: Restriction on rollovers and transfers, and additional tax for distributions, within 2 year, Code § 408(d)(3)(G) and 72(t)(6). Sample Language:

Prior to the expiration of the 2-year period beginning on the date the individual first participated in any SIMPLE IRA Plan maintained by the individual's employer, any rollover or transfer by the individual of funds from this SIMPLE IRA must be made to another SIMPLE IRA of the individual. Any distribution of funds to the individual during this 2-year period may be subject to a 25-percent additional tax if the individual does not roll over the amount distributed into a SIMPLE IRA. After the expiration of this 2-year period, the individual may roll over or transfer funds to any IRA of the individual that is qualified under Code § 408(a), (b) or (p).